



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ANGEL HENDERSON,

Plaintiff,

VS.

GRAND PRAIRIE INDEPENDENT
SCHOOL DISTRICT,

Defendant.

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NO. 4:12-CV-498-A

MEMORANDUM OPINION
and
ORDER

Before the court for consideration and decision is the motion of defendant, Grand Prairie Independent School District, for summary judgment seeking dismissal of the alleged causes of action of plaintiff, Angel Henderson. After having considered such motion, plaintiff's response thereto, defendant's reply, the pleadings, the entire record of this action, and pertinent legal authorities, the court has concluded that such motion should be granted.

I.

Background

A. Plaintiff's Alleged Causes of Action

Plaintiff initiated this action on July 19, 2012, with her complaint alleging three causes of action--interference by

defendant with her rights under the Family Medical Leave Act, 29 U.S.C. §§ 2601, et. seq. ("FMLA"), FMLA retaliation by defendant, and intentional infliction of emotional distress by defendant. Defendant filed a motion to dismiss plaintiff's alleged cause of action for intentional infliction of emotional distress, to which plaintiff failed to respond. That motion was granted by a memorandum opinion and order issued October 9, 2012. On July 16, 2013, plaintiff filed her amended complaint reasserting her causes of action based on alleged FMLA interference and FMLA retaliation.

B. More Detailed Description of Plaintiff's Claims

In the meantime, on November 26, 2012, the parties filed their joint status report in which each described the party's contentions. Plaintiff described her contentions as follows:

Plaintiff was employed by Grand Prairie Independent School District ("GPISD") as a special education teacher. On or about November 29, 2010, Plaintiff provided notice to GPISD of her need for FMLA leave. Plaintiff's physician also certified her need for leave and continuous care based on [Plaintiff]'s serious medical condition.

Only one day after her request for medical leave, GPISD immediately sought to conduct an investigation against Plaintiff to determine whether Plaintiff was operating a business from her classroom during school hours. After concluding the investigation, GPISD tried to force Plaintiff to resign her employment to deter her from obtaining medical leave. Additionally, GPISD also warned Plaintiff that it would seek to terminate her employment and fail to renew her contract if she

failed to provide a resignation. Plaintiff refused to resign. As such, GPISD terminated Plaintiff's employment and failed to renew her contract with the District.

GPISD's articulated response for termination is not legitimate. The school failed to conduct a proper investigation in this matter, failed to apply progressive discipline, and failed to terminate or discipline other similarly situated GPISD employees for the same conduct used as a basis for Plaintiff's termination.

Plaintiff is seeking actual damages, liquidates [sic] damages, attorney's fees, and costs.

Joint Status Report at 2.

II.

Grounds of Defendant's Motion and Summary of Plaintiff's Response in Opposition to the Motion

A. Grounds of the Motion

Generally stated, defendant moved for summary judgment on the ground that it "is entitled to judgment as a matter of law as Plaintiff cannot prove sufficient facts to create a genuine issue of fact to support any liability by [defendant]." Mot. at unnumbered 2nd page, section III. A more detailed statement is found in the brief defendant filed in support of its motion. As to plaintiff's contention that defendant interfered with her rights under the FMLA, defendant asserted that the summary judgment record establishes as a matter of law that (1) plaintiff requested and was granted twelve weeks of leave under the FMLA,

(2) plaintiff did not return to work after her qualified absence under the FMLA, and (3) plaintiff was not constructively discharged by defendant. Defendant's more detailed response to the retaliation claim was that (1) plaintiff cannot establish a prima facie case of retaliation under the FMLA, (2) defendant had several legitimate, non-retaliatory reasons to terminate plaintiff's probationary contract, and (3) plaintiff cannot establish that defendant's legitimate, non-retaliatory reasons for her termination constituted pretext.

B. Summary of Plaintiff's Response in Opposition

In her opposing brief, plaintiff summarized the factual and legal bases of her opposition to the motion as follows:

On July 19, 2012, Plaintiff filed the current lawsuit alleging causes of action for Family Medical Leave Act ("FMLA") interference and retaliation. Defendant's reasons for termination are not legitimate and are completely contradicted by the evidence on file. It is undisputed that Plaintiff provided notice and was granted medical leave in this case. Documented evidence demonstrates that only one day after Plaintiff's FMLA request, Defendant began a bogus investigation into Plaintiff's personal computer usage claiming Plaintiff had used Defendant's email and technology resources to operate her own personal business during school hours. Defendant initially used this alleged "misconduct" as a basis to terminate Plaintiff's employment.

In hopes of dismissing this case through summary judgment, Defendant has changed its original reason for termination and currently contends that Plaintiff was terminated due to poor performance. Despite Defendant's allegations, Plaintiff did not receive a

single written warning concerning her performance *before* her request for FMLA. Rather, Defendant's human resource department decided to begin documenting Plaintiff's alleged performance issues *only after* she requested and was granted leave.

Notwithstanding, the evidence on file clearly shows that school officials tried to coerce Plaintiff into resigning her employment *while* she was on medical leave, threatened not to renew her contract at the end of her leave if she failed to resign, and initially terminated her employment *before* the conclusion of her 12 week leave period. Once Defendant realized that it had terminated Plaintiff's employment in violation of the FMLA, it quickly attempted to return Plaintiff to work three weeks after originally terminating her. However, Defendant refused to place Plaintiff in her former position because it had already been filled by another employee. [Plaintiff] ultimately resigned her employment because she believed she had been constructively discharged after she was falsely accused of operating a business from her classroom, harassed by her superiors, repeatedly asked to resign, repeatedly told during her FMLA leave that the school district would not renew her employment contract with GPISD if she failed to resign, advised by letter that GPISD had decided to terminate her employment before the conclusion of her leave, informed that her former position would be unavailable, and after being advised that her contract would not be renewed with the District. Clearly, GPISD interfered with Plaintiff's employment by failing to return her to an equivalent position for which she was entitled and subsequently retaliated against Plaintiff by terminating/failing to renew her employment contract. There are multiple fact issues in this matter that preclude summary judgment. Defendant's Motion for Summary Judgment should be denied.

Br. in Opp'n at 3-4.

III.

Analysis

A. Pertinent Summary Judgment Standards

Rule 56(a) of the Federal Rules of Civil Procedure provides that the court shall grant summary judgment on a claim if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). The movant bears the initial burden of pointing out to the court that there is no genuine dispute as to any material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 325 (1986). The movant can discharge this burden by pointing out the absence of evidence supporting one or more essential elements of the nonmoving party's claim, "since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id. at 323.

Once the movant has carried its burden under Rule 56(a), the nonmoving party must identify evidence in the record that creates a genuine dispute as to each of the challenged elements of its case. Id. at 324; see also Fed. R. Civ. P. 56(c) ("A party asserting that a fact . . . is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record . . ."). If the evidence identified could not lead

a rational trier of fact to find in favor of the nonmoving party as to each essential element of the nonmoving party's case, there is no genuine dispute for trial and summary judgment is appropriate. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 597 (1986).

The standard for granting a motion for summary judgment is the same as the standard for rendering judgment as a matter of law. Celotex Corp., 477 U.S. at 323. If the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial. Matsushita, 475 U.S. at 597; see also Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc) (explaining the standard to be applied in determining whether the court should enter judgment on motions for directed verdict or for judgment notwithstanding the verdict).

B. Undisputed Facts Pertinent to Defendant's Motion

The existence of the following facts have been established by the summary judgment record without genuine dispute:

Plaintiff was an employee of defendant during the 2010-2011 school year under a ten-month term probationary contract that was to expire on June 4, 2011. She was employed as the Lead Teacher to a Structured Learning Classroom ("SLC") at defendant's Arnold Middle School ("Arnold"). The SLC classroom is for students with

severe disabilities, such as autism spectrum disorders or other neurological impairments that require a highly structured educational setting that would not exist in another special education or general education classroom. Each student in the SLC classroom has an individualized education program ("IEP") containing, inter alia, the student's goals and objectives, as required by the Individuals With Disabilities Education Act¹ ("IDEA"). An SLC teacher is responsible to help ensure that her students' IEPs are implemented. A teacher's failure to properly implement a student's IEP can create liability on the part of defendant for failure to provide its students a free, appropriate public education in accordance with their respective IEPs, as required by IDEA.

Early in the 2010-2011 school year, personnel of defendant, Beth Cummings, defendant's Coordinator of Assessment & Related Services, and Amanda Forman, one of defendant's Autism Facilitators, developed concerns over plaintiff's performance as an SLC teacher. They met with the principal of Arnold, Ruth White, and Arnold's assistant principal, Troy Roberts, on November 15, 2010, for a discussion of their concerns, which included (1) conflicts between plaintiff and her

¹20 U.S.C. § 1414(d).

paraprofessionals; (2) plaintiff arriving late at school and leaving early; (3) time spent by plaintiff out of the classroom, in the office, or on the telephone; (4) plaintiff's lack of (a) planning and implementation of instruction in the classroom, (b) instructional materials to effectively differentiate instruction for her students, (c) completion of logs and documentation, and (d) any documentation on restraint used in her classroom; and (5) a suspicion that plaintiff was working on another job during the time when she should have been performing her duties for defendant.

After the November 15, 2010 meeting, arrangements were made for Ms. Forman, Ms. White, and Mr. Roberts to meet with plaintiff and her paraprofessionals. Plaintiff failed to attend that meeting, but the paraprofessionals assigned to plaintiff's class did attend; and they expressed concerns that plaintiff was not properly performing her duties as an SLC class teacher, and they complained that plaintiff was frequently out of the classroom when she should have been there performing her duties, often leaving the school earlier than she should.

On November 17, 2010, Ms. Cummings and Ms. Forman observed plaintiff's classroom in order to complete a checklist, as was being done in all of defendant's SLC classes, to see if certain strategies were being implemented. The checklist, based on

observations of plaintiff's classroom, reflected poorly on plaintiff's classroom performance. There was a lack of guidance to plaintiff's paraprofessionals; no lesson plans; no organization for the communication logs; a lack of knowledge on plaintiff's part regarding the communication logs, including completion of logs; and a failure to complete the logs. Also noted on the checklist was a complete lack of classroom management, behavioral strategies, independent work stations related to each student's IEP, social skills training for plaintiff's students, and required record keeping.

On November 19, 2010, Ms. White contacted defendant's Executive Director of Secondary and Professional Support Personnel, Norm Whitaker, about the concerns Ms. White and the other responsible personnel of defendant had developed about plaintiff's performance. She informed Mr. Whitaker that plaintiff was not doing anything in the classroom, but was having the paraprofessionals perform all SLC classroom duties; that all required special education documentation and paperwork was not being completed in a timely manner; that plaintiff was leaving work early, leaving the paraprofessionals in charge of the classroom; that plaintiff was failing to call the substitute system during her numerous absences; and that there was a

suspicion that plaintiff was operating a business out of her classroom.

As it turned out, November 19 also was the last day that plaintiff reported to work for defendant. During plaintiff's absences from work in the latter part of November 2010, plaintiff failed to properly report her absences, with the result that her students were alone with two substitute paraprofessionals.

On November 30, 2010, Ms. Cummings and Ms. Forman documented to defendant's Human Resources Department the following concerns relative to plaintiff's performance as an SLC teacher:

- a. [Plaintiff] was afforded numerous training opportunities and support from the staff to help implement appropriate differentiated instruction to her students, but she showed limited follow through on the strategies and suggestions that were provided to her. Moreover, on every walkthrough and observation, there was no observable evidence of any individual planning to meet the student's individual goals and objectives;
- b. [Plaintiff] requested that paraprofessional [sic] complete logs and communications sent home to parents despite being instructed by Ms. Cummings and Ms. Forman that it was her responsibility to complete the logs and communicate with parents;
- c. [Plaintiff] did not have a functional communication system in place for her students despite being provided support to complete these systems;
- d. [Plaintiff] did not utilize individual visual schedules for her students;

- e. [Plaintiff] did not provide any instruction to her students after her paraprofessionals were placed on leave due to injuries they sustained in the classroom;
- f. [Plaintiff] failed to document any student restraints performed in the classroom despite specific legal requirements for documenting the use of restraint;
- g. [Plaintiff] failed to send her students' progress reports home in a timely manner; and
- h. [Plaintiff] did not explore or take advantage of opportunities to include her students with nondisabled peers to the maximum extent possible (i.e., through physical education, lunch, breakfast, and electives).

Mot., App. at 22.

On December 1, 2010, Lyle Dubus, defendant's Executive Director of Instructional Technology, confirmed from a check of plaintiff's computer that there was evidence that plaintiff was operating a business out of her classroom during work hours. The name of the business plaintiff owned and operated was ACCESS Adult Day Activity and Resources Center.

On the same date on which the concerns of defendant's employees were conveyed to its Human Resources Department, November 30, 2010, plaintiff requested of defendant's Supervisor of Personnel Records/Leaves that defendant fax FMLA paperwork to plaintiff's doctor's office, informing the supervisor of that Department that the doctor had instructed plaintiff to request

the paperwork. On December 1, 2010, the supervisor provided plaintiff with the material plaintiff requested. Plaintiff was informed that she was eligible for FMLA leave, and was placed on leave as of November 30, 2010. Plaintiff was allowed to take at least twelve weeks of medical leave during the 2010-2011 school year. She was never denied any request for medical leave.

Based on the information that the district had by early December 2010, Nancy Bridges, defendant's Executive Director of Human Resources, made the decision to place plaintiff on administrative leave with pay effective December 2, 2010. As of that time, responsible personnel of defendant had information suggesting to them that plaintiff's job performance was unacceptable and was impacting her students' education, but they were continuing to pursue the investigation as to whether plaintiff was running a business out of her classroom during school hours.

When the decision was made to place plaintiff on administrative leave with pay, Mr. Whitaker and Calvin Harrison, defendant's Executive Director of Elementary Personnel, met with plaintiff to inform her of the allegations regarding her business activities. At that time, Mr. Harrison was not aware that plaintiff had requested FMLA leave. Plaintiff was hostile during the meeting and she refused to answer the direct questions asked

of her. Ms. Bridges replaced Mr. Harrison in the meeting and provided plaintiff with the memorandum regarding her administrative leave. Plaintiff refused to sign the memorandum. Ms. Bridges was not aware at that time that plaintiff had requested FMLA leave.

On December 6, 2010, Mr. Whitaker learned that the school nurse at Arnold was listed as a consulting nurse for the business plaintiff was conducting during her school hours. The school nurse confirmed with defendant's personnel that she was serving as a consulting nurse for plaintiff's business out of school hours. Defendant's personnel were satisfied that the functions the school nurse performed for plaintiff's business were not having an adverse effect on the performance of her job as a school nurse.

On December 6, 2010, Ms. Bridges directed plaintiff to meet with her and Mr. Whitaker later that day, but plaintiff failed to attend the meeting. Ms. Bridges then directed plaintiff to meet with Ms. Bridges and Mr. Whitaker in the Human Resources offices the next day, December 7, 2010. Again, plaintiff failed to attend.

On December 7, 2010, Ms. Bridges informed plaintiff by correspondence that defendant's investigation concerning her outside business activities had been completed and that defendant

had determined that plaintiff was operating a business out of her classroom. That same day, a second letter was sent to plaintiff in which there was a listing of her numerous acts of insubordination to human resources personnel during the course of the investigation.

The decision was made by defendant's Board of Trustees on March 3, 2011, that defendant's best interests would be served by terminating plaintiff's probationary contract at the end of the contract term. The recommendation to the Board to terminate the probationary contract was made by Superintendent Susan J. Simpson Hull. It was made because of information Dr. Simpson Hull had concerning plaintiff's performance in the SLC classroom. When Dr. Simpson Hull made that recommendation, she was unaware that plaintiff was on FMLA leave, nor was that information communicated to the Board of Trustees. In addition to informing the Board of Trustees of plaintiff's poor performance in the SLC classroom, Dr. Simpson Hull informed the Board of plaintiff's insubordination in connection with the investigation into whether she was operating a business during school hours. The Board made the decision to terminate plaintiff's probationary contract based on Dr. Simpson Hull's recommendation. The Board was defendant's final decision maker, and the only decision maker that had the authority to terminate plaintiff's probationary contract. The

termination decision was effective June 4, 2011, the end of the term of plaintiff's probationary contract.

On March 3, 2011, defendant sent plaintiff correspondence informing her of the Board's decision. A clarification letter was sent by Ms. Bridges to plaintiff on March 23, 2011, making clear to plaintiff that her probationary contract was terminated at the end of the contract term, not during the term, with the result that plaintiff was still employed by defendant through June 4, 2011. Plaintiff was requested to inform Ms. Bridges when plaintiff was released to return to duty so that defendant could return plaintiff to work as soon as possible. However, plaintiff never returned to work. Nor did she ever submit a written resignation.

C. The Summary Judgment Record Does Not Support Plaintiff's Alleged Causes of Action

1. The Interference Claim

The court accepts for summary judgment purposes the apparently undisputed facts that plaintiff is an eligible employee under the FMLA, that defendant is an employer as defined by the FMLA, and that plaintiff gave notice of her intent to take leave contemplated by FMLA. Thus, the crucial issues as to the interference claim are whether there is summary judgment evidence that defendant interfered with, restrained, or denied plaintiff's

exercise of FMLA rights and, if so, whether there is summary judgment evidence that she was prejudiced by such an interference. See Brock-Chapman v. Nat'l Care Network, LLC, No. 3:10-CV-054-B, 2013 WL 169177, at *4 (N.D. Tex. Jan. 16, 2013).

The summary judgment record establishes without dispute that defendant allowed plaintiff to take, and that she took, the leave contemplated by FMLA to the full extent the law required. As previously noted, the evidence is that she took at least twelve weeks of medical leave during the 2010-2011 school year and that she was never denied any request for medical leave.

Plaintiff's contentions of interference relate to conduct on the part of personnel of defendant that happened to occur in part at the same time when plaintiff decided to take FMLA leave and during a part of plaintiff's FMLA leave. However, plaintiff has not adduced summary judgment evidence that the conduct of which she complains was not legitimately taken and unrelated to her FMLA leave or that any of that conduct prejudiced her FMLA rights. The summary judgment record makes clear that defendant, through its personnel, had concerns about plaintiff's work performance before she requested FMLA leave, and that activities of defendant's personnel related to plaintiff's performance while she was on FMLA leave were but part of an ongoing inquiry that was prompted by defendant's concerns relative to plaintiff's work

performance. Plaintiff's contention that there was a connection between the activities of defendant's personnel and her exercise of FMLA rights is speculation without any support in the summary judgment record.

Plaintiff's assertion that while she was on medical leave personnel of defendant tried to persuade her to resign her employment, with the threat not to renew her contract at the end of her leave if she failed to resign, points to what could be viewed as evidence that, because of plaintiff's work performance, defendant would have preferred that she not continue in her employment with defendant, but plaintiff has provided no evidence that her FMLA rights were prejudiced by any such activity.

Nor is there any summary judgment evidence that would support a finding that plaintiff was constructively discharged by defendant. The summary judgment evidence establishes without dispute that plaintiff did not return to work after November 19, 2010. Although the FMLA provides a right to reinstatement to an employee on FMLA leave, "[i]f an employee fails to return to work on or before the date that FMLA leave expires, the right to reinstatement also expires." See Hunt V. Rapides Healthcare Sys., LLC, 277 F.3d 757, 763 (5th Cir. 2001). Inasmuch as plaintiff never returned to work, her statutory right to reinstatement expired. The summary judgment record establishes

that plaintiff never provided defendant an opportunity to reinstate her to the position she had before she started her FMLA leave or to any other position.

Plaintiff attaches significance to the fact that after sending her a letter on March 3, 2011, informing her that defendant's Board of Trustees had decided to terminate her probationary contract, defendant sent her another letter on March 23, 2011, clarifying that the vote of the Board to terminate her probationary contract was a vote to terminate the contract at the end of the contract term, not immediately, with the consequence that, from defendant's standpoint, plaintiff "still [had] a contract of employment with this District until June 4, 2011." Mot., App. at 93. That same letter informed plaintiff that if she were to be released to return to duty, she was to contact Ms. Bridges, the Senior Executive Director of Human Resources, "immediately so that we may arrange to return you to work as soon as possible." Id. There is nothing in the summary judgment record that would indicate that the March 3 letter was intended to convey that the termination was to be effective immediately, nor is there anything in the record suggesting that the March 23 clarification letter was not genuinely a clarification of the message conveyed by the March 3 letter.

No rational fact finder could find from the evidence presented in the summary judgment record that defendant interfered with any right plaintiff had under the FMLA, much less that anything done by defendant's personnel that plaintiff contends constituted interference prejudiced her rights in any respect. See Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81, 89 (2002).

Therefore, the court has concluded that summary judgment should be granted as to plaintiff's alleged cause of action for interference with her rights under the FMLA.

2. The Retaliation Claim

Because there is no significant difference between retaliation claims under the FMLA and similar claims under other anti-discrimination laws, the McDonnell Douglas² framework is applicable to an analysis of a retaliation claim under the FMLA. Hunt, 277 F3d. at 768. For plaintiff to prevail on a claim of FMLA retaliation, she must first establish a prima facie case of retaliation. If she does so, the burden shifts to defendant to articulate a legitimate, non-retaliatory reason for the alleged adverse employment action. If defendant meets its burden to articulate a legitimate, non-retaliatory reason, the burden

²McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

shifts to plaintiff, in the summary judgment context, to adduce summary judgment evidence that the articulated reason was a pretext for retaliation.

A prima facie case of retaliation under the FMLA is established only if the plaintiff shows that (1) she was protected under the FMLA, (2) she suffered an adverse employment decision, and either (3a) that she was treated less favorably than an employee who had not requested leave under the FMLA or (3b) the adverse decision was made because she took FMLA leave. Id. The court has concluded that there is no summary judgment evidence that would support a finding of either of the third element options--there is no summary judgment evidence that she was treated less favorably than an employee who had not requested leave under the FMLA, nor is there any summary judgment evidence that defendant's decision to terminate her probationary contract was made because she took FMLA leave.

As to the latter alternative, the summary judgment record affirmatively establishes the lack of a causal connection because the record shows without dispute that Dr. Simpson Hull, the Superintendent of defendant who recommended to defendant's Board of Trustees plaintiff's probationary contract be terminated, had no knowledge at the time she made the recommendation that plaintiff had requested FMLA leave, and the record establishes

that the Board of Trustees, when it accepted and acted upon Dr. Simpson Hull's recommendation, did not have information regarding plaintiff's FMLA leave. In other words, the ultimate decision makers, who decided to terminate plaintiff's probationary contract, could not have taken into account in making that decision anything about plaintiff's FMLA leave because they knew nothing of it. Any contention by plaintiff that they are bound to have had knowledge of plaintiff's FMLA leave is speculation that is without any support in the summary judgment record.

As to the alternative third element that plaintiff was treated less favorably than an employee who had not requested leave under the FMLA, there is no summary judgment evidence that any similarly situated employee of defendant who had not requested leave under the FMLA was treated more favorably than plaintiff. The court does not take plaintiff's response in opposition as seriously asserting that the alternative third element applies. She makes no mention of such a contention in her summary of her response in opposition to the motion. See supra at 4-5. To whatever extent plaintiff might be contending that the school nurse who was employed by plaintiff in plaintiff's private business was a similarly situated employee whose employment by defendant was not terminated, plaintiff would be incorrect because there is no suggestion in the summary

judgment record that there is any similarity between the facts defendant would consider in determining whether to continue plaintiff's employment as an SLC teacher at Arnold, on the one hand, and the facts defendant would consider in determining whether the school nurse should be allowed to continue her employment as a school nurse at Arnold, on the other.

Furthermore, even if plaintiff had adduced summary judgment evidence of facts that would create a prima facie case of retaliation, the summary judgment record establishes with clarity that defendant articulated a legitimate, non-retaliatory reason for defendant's decision not to renew plaintiff's 2010-2011 probationary contract effective upon its expiration in June 2011. Defendant's decision makers were faced with knowledge of performance concerns that personnel of defendant had developed through inquiry, investigation, and observation over a period of months before the decision was made in March 2011 to terminate plaintiff's probationary contract at the end of its term. The record reflects that the termination decision was based on concerns relative to plaintiff's performance as an SLC teacher (including the perception of the decision makers that she was operating her private business from her SLC classroom during school hours), as well as plaintiff's insubordination when questioned relative to performance issues. Plaintiff has adduced

no summary judgment evidence raising an issue that defendant's articulated reasons for terminating plaintiff's contract were pretext for retaliation.

Therefore, the court has concluded that summary judgment should be granted as to plaintiff's alleged cause of action for FMLA retaliation.

IV.

Order

For the reasons given above,

The court ORDERS that defendant's motion for summary judgment be, and is hereby, granted and that plaintiff's alleged causes of action against defendant be, and are hereby, dismissed.

SIGNED September 6, 2013.



JOHN MCBRYDE
United States District Judge